IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4707 OF 2001

AND

CIVIL APPLICATION NO.437 OF 2003
IN
WRIT PETITION NO.4707 OF 2001

M/s.Amitkumar Ajaykumar & brothers. ...Petitioner.

vs.

1.M/s.City and Industrial Corporation
of Maharashtra Ltd. & others. ...Respondents.

Mr.S.U.Kamdar with Sandeep Aole i/b. M/s.Udwadia & Udeshi, for Petitioner.

Mr.C.J.Sawant with G.S.Hegde & C.M.Lokesh, for Respondent no.1.

Mr.F.Devetre with C.S.Balsara & Ms.Benedieta Lobo i/b. M/s.Mulla & Mulla & CB&C, for Respondent no.3.

CORAM: D.K.DESHMUKH &

V.M.KANADE, JJ.

DATED: 20th NOVEMBER,2007.

P.C.:-

1. By this petition, the petitioner challenges the allotment of the weigh bridge plot at Sector 2, Dronagiri, made by the respondent no.1 in favour of respondent no.3. The followings are the admitted positions:-

(i) The respondent no.1 CIDCO is a statutory corporation and an instrumentality of the State. It allotted the plot which is subject matter of this petition to the respondent no.3 without holding public auction, without issuing any public notice inviting offers and without inviting tenders.

(ii) During the pendency of this petition though there was initially an interim order operating directing the parties to maintain

status quo, subsequently there was no interim order operating and the interim order was also discharged by the Supreme Court by its order dated 28.7.2003.

(iii) The respondent no.3 has constructed a Weigh Bridge on the plot which the respondent no.3 is presently operating.

2. The learned Counsel appearing for petitioner relying on the judgment of the Supreme Court in the Case “Haji T.M.Hassan Rawther Vs. Kerala Financial Corporation, AIR 1988 Supreme Court 157”, states that suit plot being public property owned by respondent no.1 which is instrumentality of the State could not have been allotted to respondent no.3 without holding public auction or inviting tenders. The justification given by the respondent no.1 for not holding auction or inviting tenders is that

it has power to do so as per the provisions of Rule 4 of the New Bombay Disposal of lands Regulations,1975. It is also submitted that at that time there was need for setting up a weigh bridge immediately. Perusal of the Rules relied on by the Respondent no.1 C.I.D.C.O. shows that the respondent no.1 Corporation has to dispose of plots of lands by public auction or by inviting tenders. Land also can be disposed of by them by considering individual applications in accordance with the policy framed by them. We find that even the policy framed by the respondent no.1 in so far as the lands for weigh bridge are concerned, requires tenders to be invited for allotment of plots for weigh bridge. The Supreme Court in its judgment in the case of “Haji T.M.Hassan Rawther” referred to above has categorically observed that whenever the State wants to depart from usual practice of inviting tenders for disposing of public property, it has to justify it by compulsions, and normal rule can be departed from

only for compelling reasons and not by just convenience. The affidavit filed by the respondent no.1 does not disclose any compelling reason for not inviting tenders. Even assuming that there was need for setting up weigh bridge without any delay, a notice could have been issued by the Corporation inviting application so that all the persons who may be qualified to apply could have applied. The respondent no.1 Corporation is bound by Article 14 of the Constitution of India and therefore, it could not have allotted the land without granting an opportunity to every eligible person to apply and to have his claim considered.

3. In our opinion, therefore, looking to the matter from any point of view, the allotment of the plot of 500 sq.m. for weigh bridge made by the respondent no.1 in favour of respondent no.3 without inviting tenders and without holding public auction has to be set aside. The Court

insists on the State to hold public auction or to invite tenders when it disposes of public property because by that method persons who are eligible get an opportunity to put in their bid and it also ensures that the property fetches the best price. It is an admitted position that during the pendency of the petition the respondent no.3 has constructed a weigh bridge on the plot and the respondent no.3 is presently operating the weigh bridge. Taking overall view of the matter, therefore, in our opinion, while directing the respondent no.1 to invite tenders for disposing of the plot, a provision for protecting the interest of respondent no.3 has also to be made. The respondent no.3 has consented to the order that we propose to make in this regard. The respondent no.1 also does not have any objection for the order that we propose to make.

4. The allotment of the weigh bridge plot

by the respondent no.1 in favour of respondent no.3 is set aside. Rule is made absolute in terms of prayer clause (a).

5. The respondent no.1 shall within a period of six weeks from today invite tenders by following usual procedure which is followed by them, for disposing of the weigh bridge plot to which the petition relates.

6. The Respondent no.3 shall be at liberty to submit its offer pursuant to the tender notice.

7. In case, after opening of the tenders, the tender submitted by the respondent no.3 turns out to be the highest, subject to the provisions of the Rules that may have been framed in this regard, the respondent no.1 shall allot the suit plot to respondent no.3.

8. In case after opening of the tenders, respondent no.3 does not turn out to be the highest tenderer then the respondent no.1 shall give an opportunity to the respondent no.3 to better its bid. In that case the person who is found to be the highest tenderer and the other tenderers, may also be permitted to participate in the auction. The allotment of the plot shall be made in favour of the highest offerers. If the respondent no.3 turns out to be the highest offerer, allotment shall be made in its favour. But in case the respondent no.3 does not turn out to be the highest offerer, the respondent no.3 shall remove itself from the suit plot with its belongings, without any demur, within a period of eight weeks from the date of result of the tenders/offers.

9. In case the respondent no.3 turns out to be the successful bidder, it shall be given credit for the amount that it has paid for the

suit plot pursuant to the allotment which is impugned in the petition. In case, the respondent no.3 does not turn out to be the successful bidder, it shall be at liberty to make an application to the respondent no.1 Corporation claiming proportionate refund of the amount that it has paid to the respondent no.1 for the plot. In case such an application is made, the respondent no.1 shall dispose it of in accordance with law.

10. Though the allotment of plot in favour of respondent no.3 is cancelled by this order, till the process of inviting tenders as directed above is completed, the respondent no.1 shall not disturb the occupation of the suit plot by respondent no.3 and the respondent no.3 shall continue to occupy the suit plot on the same terms and conditions on which it is presently occupying the suit plot, till either pursuant to this order he is permitted to continue on the new

terms or he is required to vacate the suit plot. Rule is made absolute accordingly. Civil application no.437 of 2003 is also disposed of.

(D.K.DESHMUKH, J.)

(V.M.KANADE,J.)